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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 487

LEVER BROTHERS COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

On Appeal From the United States District Court for the Southern District of Ohio, Western Division

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant Lever Brothers Company appeals from an order of the United States District Court for the Southern District of Ohio sustaining a motion by the Procter & Gamble Company to quash a subpoena duces tecum obtained by Lever Brothers. Lever Brothers also appeals from an order of that court denying a motion by Lever Brothers to compel answers to questions propounded at an oral deposition.

OPINION BELOW

The opinion of the Cincinnati district court (John Peck, J.) sustaining a motion by the Procter & Gamble Company, et al., to quash a subpoena issued at the request of Lever Brothers Company is embodied in a letter addressed to counsel for Procter & Gamble Company dated July 3, 1962. The Court's letter is reprinted in the Appendix, *infra*, p. 21a. The district court did not issue any opinion in connection with an order denying a motion by Lever Brothers Company to compel answers to questions propounded at an oral deposition.

JURISDICTION

The United States instituted an action in the district court for the Southern District of New York against Lever Brothers Company and Monsanto Chemical Company under Section 15 of the Clayton Act, 15 U.S.C. 15, alleging that Monsanto's transfer to Lever of the trademark "all"—a name used on a low sudsing, synthetic detergent product—violated Section 7 of the Clayton Act, 15 U.S.C. 18. On July 13, 1962, the district court for the Southern District of Ohio entered an order sustaining a motion by the Procter & Gamble Company to quash a subpoena duces tecum which Lever Brothers had caused to be served upon a Procter & Gamble executive. On July 24, 1962, the district court for the Southern District of Ohio entered an order denying a motion by Lever Brothers to compel answers to certain questions propounded orally by Lever to a Procter executive and covering the same subject matter as the subpoena duces tecum which had previously been quashed. On August 6, 1962, Lever Brothers filed a notice of appeal to this Court.

Lever Brothers filed a second notice of appeal to the Court of Appeals for the Sixth Circuit on August 10, 1962, to guard against a possible claim that the orders appealed from are not subject to review by this Court under Section 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U.S.C. 29.

The jurisdiction of this Court to review by direct appeal the orders of the district court is conferred by Section 2 of the Expediting Act, *supra*. *Brown Shoe Co.* v. *United States*, 370 U.S. 294.

QUESTIONS PRESENTED

The United States instituted an antitrust suit in the district court for the Southern District of New York against Lever Brothers Company and Monsanto Chemical Company alleging that Monsanto's transfer to Lever of the trademark "all"—a name used on a low-sudsing, synthetic detergent product—violated Section 7 of the Clayton Act, 15 U.S.C. 18. Lever Brothers informed the district judge in New York to whom the case has been assigned for all purposes. (Archie O. Dawson, J.) that certain information respecting the detergent products sold by the Procter & Gamble Company would be essential for the reason that Procter is the dominant firm in the industry by a substantial margin. The ultimate issue in the present case is whether Lever Brothers' acquisition of the trademark "all" will substantially lessen competition; information as to Procter & Gamble has a critical bearing upon the resolution of that question.

With Judge Dawson's concurrence, Lever Brothers took steps to secure the necessary data from Procter & Gamble. However, the district judge in Cincinnati, Ohio, (Peck, J.) refused to allow Lever Brothers

access to the information. He sustained in its entirety a Procter & Gamble motion to quash a subpoena duces tecum obtained by Lever Brothers, and he refused to require the information to be furnished orally on deposition. As a result of these rulings, the district court in New York has been deprived of data essential to informed adjudication of this case, and Lever Brothers is seriously prejudiced in the conduct of its defense.

The questions presented to this Court are:

I. Whether the district court in Cincinnati departed in the present case from the accepted and usual course followed by the courts in ruling upon discovery matters in antitrust cases in that it denied access to information concerning brands marketed by the dominant firm in the industry which is (i) required by the trial court in New York for an informed judgment respecting the competitive effect of the challenged acquisition, and (ii) is indispensable in connection with the defense asserted by the appellant in the present case.

II. Whether, as a matter of proper judicial administration of protracted antitrust cases and in the circumstances shown by the record in the present case, the district court for the Southern District of Ohio should have directed the Procter & Gamble Company to file its objections with the district judge in the Southern District for New York to whom this antitrust case has been assigned "for all purposes."

STATUTES INVOLVED

The relevant portion of the Expediting Act, 32 Stat. 823, as amended, 15 U.S.C. 29, reads as follows:

> In every civil action brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an

appeal from the final judgment of the district court will lie only to the Supreme Court.

The first paragraph of Section 7 of the Clayton Act, 38 Stat. 730, as amended, 15 U.S.C. 18, reads as follows:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly.

STATEMENT

1. In May, 1957, the Monsanto Chemical Company entered into an agreement with Lever Brothers Company which provided for the transfer to Lever of the trademark "all"—a name which had been used by Monsanto on a low-sudsing, synthetic detergent product. In July, 1958, the United States brought an action in the district court for the Southern District of New York against Lever Brothers and Monsanto alleging that this transaction violates Section 7 of the Clayton Act, 15 U.S.C. 18.

2. At an early point in the New York proceeding, the government, consistent with its usual practice in protracted antitrust cases, moved for an order assigning the present case to a single judge.

> "*for all purposes including the hearing of all motions and other applications preliminary to trial in this cause, the conducting of all pre-trial procedures,* and the presiding at the trial of this cause, and for such other and further relief as to the Court may seem proper." ("Motion for Assignment of Judge," Feb. 5, 1960, *United States*

v. *Lever Brothers Co. and Monsanto Chemical Co.*, C.A. 135-219, S.D.N.Y.). (Emphasis supplied).[1]

The government's motion was granted, and the case was assigned "for all purposes" to Judge Irving Kaufman, then a district court judge. After Judge Kaufman's elevation to the Court of Appeals for the Second Circuit, the present case was assigned to Judge Dawson "for all purposes." Judge Dawson is currently presiding over pre-trial preparation of this case.

3. Shortly after the complaint was filed, the government instituted an extensive discovery program against the defendants and various third parties, including the Procter & Gamble Company, the dominant firm in the detergent industry. The government obtained voluminous information from Lever and Monsanto, including figures showing sales, profits, and advertising and promotion expenditures for each of the detergent brands sold by defendants. The government also asked Procter & Gamble, among other things, for the net sales revenue realized by Procter on each of its detergent brands and Procter's advertising and promotion expenditures by brands. The government however, failed to obtain this per brand information from Procter.[2]

[1] The government's memorandum accompanying its motion pointed out that the present case clearly meets the definition of a "long and complicated case," and that it is a "major antitrust" action involving "the soap and detergent industry, a major segment of the national economy." ("Mem. In Support of Plaintiff's Motion for Assignment of a Judge," pp. 2-3).

[2] The government addressed written interrogatories to Procter & Gamble under Rule 33, Fed. R. Civ. P., which called, among other things, for the following data:

"7. State the net sales revenue derived by your Company from each product listed in Interrogatory 3 or identified in

The government was directed by the district court in New York to turn over to Lever such data as it had obtained from Procter & Gamble. *United States v. Lever Brothers Co. and Monsanto Chemical Co.*, 193 F. Supp. 254, 256 (S.D. N.Y.). In ruling that Lever Brothers was entitled to this information, Judge Kaufman, quoting from a brief filed by the government in the present case, stated:

> "To try a Section 7 case in the detergent industry without information concerning Procter & Gamble would be like trying an automobile industry case without information with respect to General Motors." (*United States v. Lever Brothers Co. and Monsanto Chemical Co.*, 193 F. Supp. 254, 256 (S.D.N.Y.).

---

answers to Interrogatories 4 through 6 above [i.e., each Procter detergent brand] during each year 1953 through 1957 and for each half year in 1958 and 1959.

* * *

"12. State the following for each year 1953 through 1957 and for each half year during 1958 and 1959:

a) the total amount spent by your company for advertising and promotion;

* * *

e) the amount your Company spent in advertising and promoting each individual product either listed in Interrogatory 3 or identified in response to Interrogatories 4 and 5 [i.e., each Procter detergent brand]."

These interrogatories were never answered by Procter; the government entered into a stipulation with Procter, to which Lever was not a party, agreeing to withdraw these questions. ("Stipulation" dated Nov. 14, 1960, United States v. Lever Brothers Co. & Monsanto, C.A. 135-219, S.D.N.Y.);

4. At a pre-trial conference, Lever Brothers informed Judge Dawson that it would be essential for informed adjudication of this case to have additional information with respect to the detergent brands marketed by Procter & Gamble for the reason that Procter & Gamble was the Number 1 firm in the industry by a substantial margin:

> [Counsel for Lever] . . . [T]he figures as to Procter will become of extreme importance.
> The Court [Judge Dawson]: I think they are extremely important; I agree with you.
>
> * * *
>
> [Counsel for Lever] . . . I say you need this [profit and promotional and advertising] data from Procter & Gamble to underpin what I think must ultimately be the conclusion here.
>
> [Judge Dawson]: I think we will have to get that, but the important thing now is to get this moving. . . . (Minutes of Pre-Trial Conference, March 12, 1962, pp. 79, 84, *United States* v. *Lever Brothers Co. and Monsanto Chemical Co.*, C.A. 135-219, S.D.N.Y.).

5. Lever Brothers then took formal steps to secure the necessary information. Lever Brothers noticed depositions under Rule 26, Fed. R. Civ. P., of three Procter & Gamble executives, and Lever caused subpoenas to be served in Cincinnati, Ohio, upon these three Procter employees.[3] A subpoena duces tecum addressed to one of these executives, R. S. Runnels, Comptroller of Procter & Gamble, called for the production of records or schedules showing, in sub-

[3] Procter & Gamble's principal place of business is located in Cincinnati.

stance, the advertising and promotion expenditures, profits, and research expenditures for the period 1950-1958 for each of Procter's various detergent brands identified by the government as products within the relevant line of commerce.

Procter & Gamble filed a motion in the district court for the Southern District of Ohio to quash the subpoena duces tecum and to preclude Lever from inquiring on oral depositions into any of the topics covered by the subpoena duces tecum. Lever Brothers asked the Ohio district court to direct Procter to address its motion to the District Judge in New York to whom this case had been assigned for all purposes. This Lever Brothers request was denied.

6. Lever Brothers submitted to the district court in Cincinnati that the information was required by the trial court in New York for the following reasons:

(i) This case involves a charge that the acquisition[4] of a single trademark may substantially lessen competition or tend to create a monopoly. A decision as to this issue requires consideration of economic and financial data, respecting the principal competitive brands sold in the industry.

(ii) The information required for an informed adjudication includes, among other things, sales, advertising and promotion expenditures, and profit figures for each brand which is deemed to be within

[4] Lever Brothers did not acquire any plants, production facilities, or capital stock of Monsanto. In other words, there was no fusion between the two companies. Contrast *Brown Shoe Co.* v. *United States*, 370 U.S. 294; *Maryland and Virginia Milk Producers Assn. Inc.* v. *United States*, 362 U.S. 458. Lever acquired the existing inventory of "all" and certain patent rights but these are really peripheral to the central issue which involves the trademark itself.

the relevant line of commerce.[5] Since this case relates primarily to the competitive significance of an acquired trademark, and since the commercial value of a trademark is determined by consumer acceptance which in turn is heavily influenced by advertising, statistics with respect to advertising are indispensable. The importance of advertising in the soap business is common knowledge. Further, advertising and promotion expenditures are necessary to the evaluation of the relative competitive standing of different brands.

Lever contended that it is relevant in a Section 7 case to compare the profits of the two parties to the acquisition with the profits of other firms in the industry. See *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, at 617 (S.D.N.Y.).[6] Data as to research is required for the reason that the magnitude of Procter's expenditures on research in the detergent field are pertinent in assessing the likelihood that "all" could have survived as a competitive factor against Procter in the hands of any firm other than Lever Brothers.

(iii) The Procter & Gamble Company is by far the dominant firm in the detergent industry, and the

[5] There is a dispute between the government and defendants with respect to the relevant line of commerce in the present case. For purposes of the subpoena duces tecum, Lever took the line of commerce as defined by the government, namely all heavy duty detergent products, and asked for information only with respect to the Procter & Gamble products within that line. Procter & Gamble manufactures a great number of other products as to which no information was requested.

[6] Lever Brothers informed the district court in Cincinnati that Lever expected to prove at trial that Lever and Monsanto had lost large sums in marketing heavy duty detergents during a period when Procter was realizing large profits.

individual brands its sells occupy premier positions. Figures placed before the Ohio district court, originally submitted by Procter & Gamble to the Federal Trade Commission in another proceeding, showed as follows:[7]

PERCENTAGE OF PACKAGED HEAVY DUTY DETERGENT SALES IN THE UNITED STATES BY ALL COMPANIES

	1955	1956	1957
Procter & Gamble	55.6	54.9	55.7
Lever Brothers	17.2	16.8	16.8

In 1957, when the Lever-Monsanto agreement was entered into, sales of one Procter heavy duty detergent brand, "Tide," exceeded sales of all Lever detergent products combined. These same statistics showed that in 1957, "all" accounted for only 6% of all packaged heavy duty detergent sales. The Procter & Gamble product "Dash" is the principal competitor of "all" in the low sudsing detergent field.

With respect to the merits of the motion to quash, Procter & Gamble contended, in essence, that the information sought constitutes confidential business records, and that its disclosure would be detrimental to Procter's competitive status. Procter also argued that it had already produced a substantial volume of information in connection with the present case.

The government neither opposed nor supported Lever's discovery request. The government informed the Cincinnati district court that "Procter & Gamble's motion to quash the Lever Brothers subpoena is a third party proceeding in which the Government is

[7] The figures were filed in the district court in New York by the government in this case and they are attached as an exhibit to the Affidavit of Abe Krash submitted to the Cincinnati court which is part of the certified record.

not a party of interest" and that "the Government takes no position with respect to the merits of Procter & Gamble's motion to quash." (Letter, Lee Loevinger, Esq., Assistant Attorney General, Antitrust Division; to Hon. John Peck, May 23, 1962). The government reserved the right to object to introduction of the data when offered at the trial in New York.

7. The Ohio district court sustained Procter & Gamble's motion to quash in its entirety. Judge Peck held that good cause had not been shown for the production of the data,[8] and that "much information in the general area of that contemplated by the subpoena had already been made available to the defendant . . ."[9] (p. 21, *infra*) He distinguished an earlier opinion by Judge Kaufman, then presiding judge in the present case in New York, who had directed that certain Procter data in the government's

[8] The Court below erroneously assumed that the requirement of "good cause" in Rule 34, Fed. R. Civ. P. is applicable to a subpoena duces tecum addressed to a third party under Rule 45. Rule 34, of course, was not relevant. See *Horizons Titanium Corp.* v. *Norton Co.*, 290 F.2d 421, 425, n. 6 (1st Cir.). Procter & Gamble was required to establish that the subpoena was "unreasonable or oppressive" (Rule 45(b)). As a leading commentator puts it: "If the subpoena is for the production of documentary evidence on the taking of a deposition, the test of its propriety is relevancy, rather than materiality or admissibility, and the subpoena should be upheld unless it is 'palpable that the evidence sought can have no possible bearing upon the issues.'" 5 *Moore's Federal Practice* p. 1723 (2d ed. 1951). In any event, Lever submits that the necessity for the data was clearly shown.

[9] None of the data called for by the subpoena was in Lever Brothers' possession. Runnels, one of the subpoenaed Procter executives, admitted that Procter & Gamble had never turned over any data in the present case showing advertising and promotion expenditures or profit figures by brands. (Runnels Deposition Tr. pp. 9-10, 17-18).

possession be furnished to Lever, on grounds that the earlier data "did not 'contain breakdowns by brand names, the type of data which presumably would be most injurious if improperly used by a competitor.' "[10]

8. Lever thereafter attempted to secure the data called for by the subpoena duces tecum through an oral deposition of a Procter executive. The deponent was instructed by counsel for Procter & Gamble not to answer questions such as those which follow relating to "Dash," a low sudsing, synthetic detergent product marketed by Procter which is directly competitive with "all":

> "What were the advertising expenditures on Dash in 1955?"
>
> "What was Procter's profit on the product Dash in 1955?"
>
> "What were the advertising expenditures by Procter & Gamble in advertising Dash on television in 1955?"
>
> "How much was expended by Procter in couponing Dash in 1955?" (Runnels' Deposition Tr., pp. 13, 18, 19, 20).

A motion by Lever to compel answers to these interrogatories was denied by Judge Peck on the basis of his previous ruling quashing the subpoena duces tecum.

In sum, the district court in Ohio refused to permit access to any statistical or financial information by

[10] The Court below erroneously assumed that the information previously furnished to the government by Procter & Gamble which Judge Kaufman ordered turned over to Lever did not include any data on a brand basis. The data produced in fact included figures showing percentage estimates of sales by brand.

brand with respect to products marketed by the dominant firm in the industry which are within the relevant line of commerce as defined by plaintiff. It is these rulings which Lever seeks to have reviewed by this appeal.

THE QUESTIONS ARE SUBSTANTIAL

1. This appeal raises substantial questions with respect to judicial administration of the antitrust laws. The adjudication of cases under Section 7 of the Clayton Act requires detailed analysis of economic data with respect to the principal products and firms found to be within the relevant line of commerce. As the Court observed in *Brown Shoe Co. v. United States*, 370 U.S. 294, 322 n. 38, the Federal Trade Commission and the district courts have "recognized the relevance and importance of economic data that places any given merger under consideration within an industry framework almost inevitably unique in every case." Information concerning the brands sold by Procter & Gamble is obviously indispensable in deciding the present case. The ultimate issue in the present case is whether Lever's acquisition of the single trademark "all" will lessen competition within the meaning of Section 7. A decision as to that question in turn requires a meticulous comparison among "all" and various competitive products. Procter & Gamble produces the principal directly competitive brand—"Dash"—and it is the dominant firm in the detergent industry by a very substantial margin, p. 11, *supra*.

The necessity for information as to Procter was recognized by the trial judge in New York to whom this case has been assigned for all purposes. He

agreed that figures as to Procter & Gamble "are extremely important," and when counsel for Lever notified him that Lever contemplated discovery proceedings for the purpose of obtaining such information, he declared, "I think we will have to get that." (p. 8, *supra*.)

The government also recognized the necessity for much of the very data sought by Lever Brothers. The government itself called upon Procter & Gamble at an earlier stage in the present litigation for much of the identical information (pp. 6-7, *supra*), but the government did not obtain the data (*ibid*). And in connection with an earlier discovery proceeding relating to Procter & Gamble data, the government informed Judge Irving Kaufman, then presiding judge in this case:

> "To try a Section 7 case in the detergent industry without information concerning Procter & Gamble would be like trying an automobile industry case without information with respect to General Motors." (*United States* v. *Lever Brothers Co. and Monsanto Chemical Co.*, 193 F. Supp. 254, 256 (S.D.N.Y.).)

In brief, the ruling of the Cincinnati district court denies the district court in New York of data essential to informed adjudication, and it seriously prejudices Lever Brothers in the conduct of its defense.

2. The decision below is a precedent for an extremely restrictive view of discovery in Section 7 cases, and it has important implications with respect to judicial administration of antitrust cases. Suits under Section 7 of the Clayton Act constitute an increasingly important segment of the antitrust litigation instituted by the Justice Department and the Federal Trade Commission. In 1961, "the Department brought 19

cases, a record number against mergers or prospective mergers as anticompetitive." Department of Justice Press Release, Jan. 22, 1962; see also Rowe, *Mergers and the Law: New Directions for the Sixties*, 47 A.B.A. J. 1074 (1961). Financial and statistical information with respect to other products and firms in the industry is, of course, indispensable to a just disposition of such cases. The principles of discovery apply equally to the government and to defendants, so that the ruling below will handicap not only defendants but the government as well as the trial courts.

The decision below also cannot be reconciled with the principles of discovery applicable to all proceedings generally. The Cincinnati court sustained Procter's objections in part upon the theory that the data called for was confidential business information, p. 22, *infra*. Even if that point were valid—and we deny that it is—the proper action was not an order denying discovery in toto but an appropriate protective order which would safeguard secrecy. Information is not immune from discovery because it is allegedly confidential business intelligence.[11] Cf. *United States* v. *St. Regis Paper Co.*, 368 U.S. 208.

3. Lever submits that considerations of judicial economy and efficiency, orderly judicial control of

[11] Lever submits that the confidential nature of the information was grossly exaggerated by Procter. The most recent information sought was for the year 1958; most of it was from an earlier period. In a technologically dynamic industry like the detergent industry statistics four years old are of virtually no contemporary commercial significance—they are "old hat." Further, it borders on the fanciful to suggest that disclosure of this archaic statistical information could somehow have impaired the competitive position of a firm controlling nearly 60% of a market, nearly three times the size of its nearest competitor.

pretrial discovery proceedings in a complex case, and the comity owing from one court to another should have led the district court in Cincinnati to direct Procter & Gamble to address its motion to quash to the district court in New York. The New York court was in the best position to appraise the relevance of the material sought by Lever Brothers since it was familiar with the issues presented by the government's complaint. It was in the best position to weigh the importance of the information sought against Procter & Gamble's claim that it would suffer competitive injury. And it was in the best position to enter any protective order and to supervise the discovery mechanics. In short, the district court in New York had ultimate responsibility for deciding this case, and a motion of far reaching consequence should have been adjudicated by that court.

The ruling of the Court below cannot be squared with these considerations or with repeated recommendations during the past decade by every agency which has considered the unique problems presented by protracted cases. The 1951 study of the Judicial Conference of the United States—the "Prettyman Report"—specifically recommended that in antitrust cases

> "All preliminary motions should be considered and disposed of by the judge who will hear and determine the cause." (13 F.R.D. 41 at 83.)

The federal circuit and district judges attending the *Seminar on Protracted Cases Held at The New York University Law Center* resolved that

> "The long protracted case should be assigned upon its filing to one judge, and *such judge should handle all proceedings therein.*" (21 F.R.D. 395 at 520 (1957)).

Similarly, the *Seminar on Protracted Cases* at Stanford University, 23 F.R.D. 319 (1958), concluded that:

> "Little elaboration of this point seems necessary, for substantially every commentator, writer or authority who has considered the problem of the big case has concluded that *the entire case should be promptly assigned to a single judge for all purposes.*" (23 F.R.D. at 392). (Emphasis supplied).

The government stated to the Ohio district court in the present case that "We would in no way oppose the transfer of this discovery hearing to Judge Dawson since he is familiar with the legal and factual issues involved in the litigation and charged with the responsibility of ultimately deciding the case on its merits." (Letter, Lee Loevinger, Esq., Assistant Attorney General, Antitrust Division, to Hon. John Peck, May 23, 1962). The government stated, however, that it was "uncertain as to whether a third-party deponent can be required under Rule 45(b) of the Federal Rules of Civil Procedure to submit a motion to quash to a Court other than the Court for the district in which the deposition is to be taken and in which the deponent resides." (*Ibid.*) Lever believes that the Ohio court had authority, in the circumstances of this case, to make such a ruling. The Ohio court had jurisdiction over Procter & Gamble and the three Procter executives. It has long been settled "that a party subject to the jurisdiction of . . . [a] court can be ordered to institute, defend, or appear in proceedings in another state." *Equitable Trust Co.* v. *Schwebel*, 40 F. Supp. 112, 114 (E.D. Pa.), aff'd, 117 F. 2d 738 (3d Cir.). The applicable principle

is formulated in the A.L.I., *Restatement of the Law of Conflicts of Laws*, Section 95 (1934), as follows:

> "A state can exercise through its courts jurisdiction to order a party subject to its jurisdiction to institute proceedings in a court or other governmental agency in another state or to defend or appear in such proceedings."

In any event, the issue, characterized by the government as "uncertain," should be authoritatively resolved.

CONCLUSION

We believe the questions presented by this appeal are substantial and of public importance, and that probable jurisdiction should, therefore, be noted.

Respectfully submitted,

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October, 1962

APPENDIX

Opinion of District Court for the Southern District of Ohio

JUDGE'S CHAMBERS
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI 2

JOHN W. PECK
Judge

July 3, 1962

Dinsmore, Shohl, Barrett, Coates & Deupree
Union Central Building
Cincinnati 2, Ohio

Re: Civil Action No. 5054
UNITED STATES OF AMERICA
v.
LEVER BROS. CO., ET AL.

Gentlemen:

After a review of the transcript of the arguments of counsel relative to the motion of certain parties named in a subpoena duces tecum in the above action to quash said subpoena, and of the voluminous affidavits and memoranda submitted in connection therewith, it has been concluded that the motion is well taken.

This conclusion is based on the failure of the defendant to show good cause to require production of the detailed information sought. Much information in the general area of that contemplated by the subpoena has already been made available to the defendant by the use of cross interrogatories and through motion requiring the United States to produce information. In resisting the motion, defendant relies strongly on the learned opinion in United States v. Lever Bros., 199 F. Supp. 254 (S.D.N.Y. 1961), but in contrast to the situation here existing it will be noted that that decision was concerned with figures which did not

"contain breakdowns by brand names, the type of data which presumably would be most injurious if improperly used by a competitor."

An entry sustaining the motion to quash subpoena duces tecum and overruling the motion to limit scope of deposition examination for the reason indicated at the time of the oral argument (Transcript, p. 5), endorsed by counsel for the parties concerned, may be presented.

Yours truly,

JOHN W. PECK

cc: Paxton & Seasongood
Mr. James J. Coyle

Orders by District Court for the Southern District of Ohio

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO

No. 5054

In the Matter of:

UNITED STATES OF AMERICA, *Plaintiff*,

v.

LEVER BROTHERS, ET AL., *Defendants*

ORDER

This cause came on to be heard on the motions of The Procter & Gamble Company, Richard S. Runnels, Albert N. Halverstadt and John W. Hanley to quash the subpoena duces tecum addressed to Richard S. Runnels and to limit the scope of deposition examination of Richard S. Runnels, Albert N. Halverstadt and John W. Hanley, pursuant to subpoenas heretofore issued to appear and testify on behalf of Lever Brothers. The Court, having heard argument of counsel and having considered the affidavits and memoranda submitted by the parties and being fully ad-

vised in the premises, finds that the motion to quash the subpoena duces tecum to Richard S. Runnels should be, and hereby is, sustained, and it is ordered that the said subpoena duces tecum be quashed. The Court further finds that the motion to limit the scope of deposition examination is premature, said depositions not having been commenced, and it is therefore ordered that the motion to limit the scope of deposition examination is overruled.

/s/ John W. Peck (J)
United States District Judge

Dinsmore, Shohl, Barrett, Coates & Deupree

/s/ Richard Barrett

Attorneys for The Procter & Gamble Company, R. S. Runnels, A. N. Halverstadt and J. W. Hanley.

No objection as to form

/s/ Paxton & Seasongood

Attorneys for Lever Brothers

Dated: July 13, 1962

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

No. 5054

In the Matter of:

United States of America, *Plaintiff*

v.

Lever Brothers, et al., *Defendants*

Order

This cause came on to be heard on the motion of Lever Brothers Company for an order to compel Richard S. Runnels, Albert N. Halverstadt and John W. Hanley, witnesses subpoenaed to testify on behalf of Lever Brothers Company, to answer certain questions propounded on oral

deposition examination which the witnesses declined to answer on the instruction of counsel. It appearing that the questions call for the same information as contained in the books and records of The Procter & Gamble Company identified in Schedule "A" to the subpoena duces tecum addressed to Runnels, which the Court ordered quashed on July 13, 1962,

It is Ordered that the motion should be, and hereby is, denied.

/s/ JOHN W. PECK (J)
United States District Judge

/s/ RICHARD BARRETT

DISSMORE, SHOHL, BARRETT, COATES & DEUPREE,
Attorneys for The Procter & Gamble Company,
R. S. Runnels, A. N. Halverstadt and
J. W. Hanley.

No objection as to form

/s/ ABE KRASH
Attorneys for Lever Brothers Company

Dated: July 24, 1962.